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MAILED

AUG 23 2010

OFFICE OF PETITIONS

In re Patent of James E. Dowling et al. : DECISION ON REQUEST  
Patent No. 7,674,791 : FOR RECONSIDERATION OF  
Issue Date: March 9, 2010 : PATENT TERM ADJUSTMENT  
Application No. 10/552,305 : AND NOTICE OF INTENT TO  
371(c) Date: August 29, 2006 : ISSUE CERTIFICATE OF  
Atty. Docket No. B2047-7036US/A197 US002 : CORRECTION

This is a decision on the petition filed May 7, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by nine hundred sixty-seven (967) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by nine hundred sixty-seven (967) days is **GRANTED to the extent indicated herein.**

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The period of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") is 450 days and is not in dispute.

The period of delay under 35 U.S.C. § 154(b)(2)(C) ("Applicant Delay") is 0 days and is not in dispute.

The period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is in dispute.

The petition states the date of commencement is October 7, 2005. However, the application was not filed with a request for early processing and the date of completion of all the requirements set forth in 35 U.S.C. §§ 371(c)(1), (c)(2), and (c)(4) was August 29, 2006. The correct date of commencement is October 11, 2005.<sup>1</sup> The number of days beginning October 12, 2008, the day after the date three years after the date of commencement, and ending on March 9, 2010, the date of issuance is 514 days. Therefore, the period of B Delay is 514 days, not 517 days as alleged in the petition.

The number of days of overlap between the period of A Delay and the period of B Delay is in dispute.

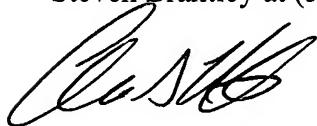
The petition asserts the period of A Delay does not overlap with the period of B Delay. However, the period of A Delay (October 30, 2007, to January 21, 2009)<sup>2</sup> does overlap with the period of B Delay (October 12, 2008, to March 9, 2010). Specifically, both periods of delay include the period beginning October 12, 2008, and ending January 21, 2009. The number of days beginning October 12, 2008, and ending January 21, 2009, is 102 days. Therefore, the period of overlap is 102 days.

In view of the prior discussion, the patent term adjustment is 862 days, which is the sum of 450 days of A Delay and 514 days of B Delay reduced by 102 days of overlap and 0 days of Applicant Delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **eight hundred sixty-two (862) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

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<sup>1</sup> October 9, 2005, the date 30 months after the priority date, was a Sunday, and October 10, 2005, was a federal holiday.

<sup>2</sup> The period of A Delay began October 30, 2007, the day after the date 14 months after the date the application completed all the requirements set forth in 35 U.S.C. §§ 371(c)(1), (c)(2), and (c)(4), and ended on January 21, 2009, the date the Office mailed a restriction requirement.

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**CERTIFICATE OF CORRECTION**

PATENT NO. : 7,674,791 B2  
APPLICATION NO. : 10/552,305  
DATED : March 9, 2010  
INVENTOR(S) : James E. Dowling et al.

**DRAFT**

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 642 days.

Delete the phrase "by 642 days" and insert -- by 862 days--